

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of

AARON T.,

Claimant,

And

REGIONAL CENTER OF ORANGE
COUNTY,

Service Agency.

OAH No. L2006010606

DECISION

On March 7, 20, April 12 and 17, 2006 in Santa Ana, California, Stephen E. Hjelt, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter.

The Regional Center of Orange County (hereinafter referred to as RCOC, or service agency) was represented by Mary Kavli, Consumer Services Representative.

Aaron T. (hereinafter claimant) was represented by Susie Tsang, claimant's mother.

The record was opened and evidence and testimony was taken. All exhibits offered by both sides were marked for identification, received in evidence and accorded the weight the Administrative Law Judge determined. Although the record was sufficient for the findings below, it would have been beneficial to have the benefit of the live testimony of claimant Aaron T. and Dr. Jeffrey Bone.

ISSUES

1. Has the Regional Center failed to provide the supports and services required to assist claimant pursuant to the Lanterman Act?

2. Has the Regional Center acted in an incompetent fashion in dealing with claimant?
3. Has the Regional Center acted in a punitive and retaliatory fashion in dealing with claimant?

The answer to each question above, as more fully explored below, is “No.” However, certain conduct on the part of the Regional Center has contributed to the stalemate that currently exists.

FACTUAL FINDINGS

1. Claimant is a 32-year-old man who first qualified for services as a regional center client in March, 2005. Since that time, his relationship with the regional center has been characterized by constant acrimony that has not abated. He has received some services but the intensely adversarial relationship between claimant’s mother and the Regional Center has hampered the provision of services. Claimant’s mother blames Regional Center for various failures of responsibility and accuses the Regional Center further of repeated and systemic incompetence, slander and active malice in retaliating against claimant for standing up to the Regional Center and demanding needed services. Regional Center blames the mother and maintains it has acted appropriately and offered the needed supports and services which are designed to meet claimant’s needs. It denies it has acted with malice and in a retaliatory way.

2. One of the items sought by claimant is an order by the Administrative Law Judge transferring claimant’s case to another Regional Center. It is unfortunate that there is no such provision for this in the Lanterman Act since it is unlikely, based upon the Factual Findings herein, that a satisfactory working relationship is possible between claimant and the Regional Center. This Finding is regrettable but in 17 years of hearing these cases, no other case approximates the level of distrust and meanness that this case does. Unfortunately, the disagreements here are so personal and deep-seated on the part of claimant’s mother that there does not appear to be any alternate way for her to view what has happened or what should happen in the future.

3. Claimant is currently attending junior college while living with his mother at home. He is in many ways high-functioning. However, there is no question that he needs supports and services that can be provided by or through the Regional Center.

4. There are many factors that have brought this case to its unfortunate present status. The first is a fundamental misunderstanding on the part of claimant’s mother of the meaning of the term “generic resources.” It is her contention that a generic resource cannot by definition be a particularized service designed to meet the unique needs of a claimant. She views generic resources as simply a way for the regional center to avoid spending money on the claimant.

5. The second factor that has lead to the present stalemate involves blunders made by the Regional Center. In this case, as more particularly found below, the Regional Center has made errors in their handling of this case. However, those errors were not intentional, nor were they evidence of incompetence nor were they retaliatory. They were errors that were very remedial but for claimant's mother's response.

6. Claimant did not testify. His qualifying diagnosis is variously described in the record as either Aspergers Syndrome or the 5th category. He graduated from high school in San Diego when he was 18 in or about 1992. He exhibited developmental and/or behavioral challenges since he was a young child. When he was in kindergarten, it was suggested that he be placed in special education. His mother rejected this recommendation. She believed that he did not have a problem. She does recall that he has had attention span and concentration problems for a long time. For those reasons, he spent most of his time in private schools growing up so that he could take advantage of smaller class size and the additional individual attention. After graduation from high school, he began work and junior college. He is gifted with computers . . . in his mother's words...a "natural." However, this gift, or special skill, was not enough to keep him employed. He would get a job and then not be able to hold it. His difficulty with employment was due to long embedded problems that seemed to get more pronounced as time went on. He had problems following schedules. He could not stay on a regular routine. He had problems going to sleep and getting up and generally structuring his life as one would expect a young adult to do.

7. After many different counselors and therapists and doctors over the years, claimant has begun seeing Dr. Jeffrey Bone in the last year and according to claimant's mother there has been improvement in his behaviors for the first time in a long time. Dr. Bone is one source of the multi faceted dispute between claimant and the regional center.

8. Those who qualify for regional center services are called clients or claimants. They are serviced by a variety of specialized personnel who have training and expertise in dealing with the special population of the developmentally disabled. Although there were obvious personality mismatches in this case, there was no showing that any of the regional center personnel were not qualified to deal with claimant's condition or his case. Unfortunately, claimant's mother found fault with each and every service coordinator that was assigned. Some of the reasons were that one of the service coordinators was Spanish speaking; another because he smelled. After the fifth service coordinator was deemed incompetent and unsatisfactory by the mother, the Regional Center asked Lori Burch to step in and act as the service coordinator. Although she had a great deal of general expertise dealing with the issues presented by the developmentally disabled, she had not acted as a service coordinator for many years. Her principal job for at least the last 15 years was as an intake coordinator. She was asked to serve as the service coordinator for claimant because she had developed a very positive relationship with claimant and his mother during the intake process. In fact, at the time of intake, claimant and his mother asked that Lori Burch become the service coordinator but that request was denied due to her position as intake coordinator. When the various service coordinators were deemed incompetent by claimant's mother, the

Regional Center, seeking some way to preserve a working relationship with the family, asked Lori Burch to act as service coordinator on a special basis. Regional center told Burch that they would see to it that she had assistance in dealing with any issues she was unfamiliar with.

9. Lori Burch is knowledgeable and competent with respect to the needs and supports and services that the developmentally disabled generally need. She was and is competent, with help from the Regional Center, to deal with claimant's ongoing needs. However, she did err in her handling of the issue of finding a mental health professional for claimant. She did not utilize the correct in-house procedure in determining what resources should be pursued and she supplied claimant with a list of therapists who were, in fact, not currently available to provide therapy. This was an embarrassing oversight. However, it was not an act of incompetence and if there had been a decent working relationship with the family, this would have been easily overcome.

10. The Lanterman Act places an obligation on Regional Centers to be cost-effective in their operations. Welfare and Institutions Code section 44648 provides in part:

“Regional center funds shall not be used to supplant the budget of any agency which has a legal responsibility to serve all members of the general public and is receiving public funds for providing those services.”

Welfare and Institutions Code section 4659 provides in part:

“(a) Except as otherwise provided . . . the regional center shall identify and pursue all possible sources of funding for consumers receiving regional center services. These sources shall include, but not be limited to, both of the following;

(1) Governmental or other entities or programs required to provide or pay the cost of providing services, including Medi-Cal, Medicare, the civilian Health and Medical Program for Uniformed Services, school districts, and federal supplemental security income and the state supplementary program.

(2) Private entities, to the maximum extent they are liable for the cost of services, aid, insurance, or medical assistance to the consumer.

. . .

(c) This section shall not be construed to impose any additional liability on the parents of children with developmental disabilities, or to restrict eligibility for, or deny services to, any individual who qualifies for regional center services but is unable to pay . . . ”

11. Regional Center of Orange County was and is mandated to explore all generic resources and utilize such generic resources where they are available. Generic resources

refer to the source of funding and do not refer to the particular nature of the service. Much mischief in this case has come from a basic misunderstanding of what a generic resource is. For the purpose of mental health services, including psychotherapy, one generic resource for RCOC is Orange County Mental Health. Orange County Mental Health is known and relied on by RCOC as a provider of competent assessment and on going treatment for certain individuals who have developmental disabilities. Orange County Mental Health was, in the case of claimant, a generic resource that should have been available. However, due to a fundamental misunderstanding of what a generic resource was, this option was not acceptable to the claimant.

12. There is no question that claimant needs assistance from a mental health professional. The weight of the evidence strongly supports a finding that he needs, and deserves, both interventions in the form of psychotherapy and medication management. Regional Center's efforts in providing access to these supports was inadequate. There were a multitude of factors that contributed and if blame really mattered then the Regional Center and claimant's mother would share the blame. However, apportioning blame does not get needed supports and services to claimant. Claimant found a psychotherapist, Jeffrey Bone, through the efforts of his mother. In the long-term, he may or may not be the most appropriate therapist or the best fit for claimant. However, he is the one who has been providing psychotherapy services to claimant and his medical report, claimant's exhibit 37 in evidence, seems to set forth a coherent view of claimant and his progress. He references the need for additional tests and medication management. This should be addressed. The Regional Center offered an evaluation by Dr. Fernandez who is a neurologist at the University of California, Irvine. This offer was rejected by the family. There is no good reason why such an evaluation by Dr. Fernandez should not take place. Claimant's challenges require more information, not less, from the most competent specialists available. As a consultant to the Regional Center, Dr. Fernandez would be in a position to both evaluate and to make recommendations. Despite claimant's mother's certainty about the specifics of what claimant needs, this is an extremely complex and challenging diagnosis and it would not be surprising if many different approaches might be necessary before effective progress could be made. By the time of the Due Process hearing, it was apparent that claimant's mother did not believe that anything suggested or offered by the Regional Center was legitimate or in good faith. That is unfortunate because that attitude, more than anything else, is precluding claimant from receiving necessary and proper services and supports, whatever they may be.

13. Claimant's most complete exposition of his position is contained in two particular documents that were received in evidence. These are claimant's exhibit 39-Claimant's Opening Statement and exhibit 41-Closing Statements. Although there is no question that claimant's mother truly and sincerely believes in the conclusions she draws from her perception of events, these two documents reflect the closed mind and climate of blame on the part of claimant. The history of this case is complicated but the primary reason for where it is comes from claimant's fixed belief that only she can determine what her son needs and that when she does not receive what she wants, when she wants it, then her son's needs are not being met and it is Regional Center's fault. In this climate, present from the

outset, it is virtually impossible to engage in the give and take and collaborative efforts that are required to facilitate supports and services that best meet the needs of this challenging person. The Order below is made without any confidence that any such give and take can or will take place.

14. Contrary to claimant's assertions, "generic resources" had not been exhausted when claimant came to the Regional Center. In fact, as a result of the original planning team meetings certain generic resources were initiated in order to try to meet claimant's needs, including the Department of Rehabilitation. Generic resources, in claimant's mind, are inferior services per se. This fundamentally flawed and erroneous mind set has played havoc with any attempted provision of services in this case.

15. It is not completely clear from this record whether claimant is out of pocket for any part of the professional charges from Dr. Bone. To the extent that claimant is out of pocket, i.e. that he has already expended funds of his own to pay for a portion of those charges, then upon submission of receipts or other documents showing actual payments, he should be reimbursed for this by the Regional Center. Further, it is anticipated that claimant will continue to be seen and treated by Dr. Bone, such reimbursement for out of pocket expenses (those not covered by other sources such as Medi-Cal, Medi-Care or private insurance) which are actually incurred shall be reimbursed for the next six months of treatment at which time an assessment should be made about future needs for psychotherapy.

16. Claimant seeks recovery of sums of money for items that are not recoverable under the Lanterman Act. Claimant asks for \$7,800 for supportive living services from March 2005 to March 2006. There is no showing in this record that such sum was incurred nor that there is a legal right to recover. Reasonable efforts were made by the Regional Center to provide access to such services. These were summarily rejected by claimant although there was no showing that they were in fact inappropriate for claimant.

17. Claimant in the Claimant's Opening Brief asks that the case be transferred to San Diego County "to get away from the hostile environment of RCOC." In Claimant's Closing Statements he asks that the case be transferred to Riverside County for the same reason. There is no discretionary power on the part of the Administrative Law Judge as to this request. Services, by law, are provided to clients who qualify for such services on the basis of residence within the catchment area of the respective Regional Center.

LEGAL CONCLUSIONS

1. The Lanterman Developmental Disabilities Services Act (hereafter the Lanterman Act) is set forth at Welfare and Institutions Code section 4500 et seq.

The Lanterman Act was enacted to prevent or minimize the institutionalization of developmentally disabled persons, to prevent their dislocation from their families and the community, to enable developmentally disabled persons to approximate the pattern of

everyday living of non disabled persons of the same age and to permit developmentally disabled persons to lead more independent and productive lives within the community.

The Lanterman Act authorizes the Department of Developmental Services to contract with regional centers to provide developmentally disabled individuals with access to services and supports that are best suited to them throughout their lifetime or until it is determined that such services and supports are no longer required.

Regional centers are operated by private nonprofit community agencies. While the Department of Developmental Services may promote uniformity and cost effectiveness in the operation of regional centers, its responsibility does not extend to the control of the manner in which regional centers provide services or in general operate their programs. See, *Association for Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.App.3d 384.

2. The Lanterman Act imposes an obligation on the regional centers to be cost-effective in their operations.

Welfare and Institutions Code section 44648 provides in part:

“Regional center funds shall not be used to supplant the budget of any agency which has a legal responsibility to serve all members of the general public and is receiving public funds for providing those services.”

Welfare and Institutions Code section 4659 provides in part:

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(1) Governmental or other entities or programs required to provide or pay the cost of providing services, including Medi-Cal, Medicare, the Civilian Health and Medical Program for Uniformed services, school districts, and federal supplementary security income and the state supplementary program.

(2) Private entities, to the maximum extent they are liable for the cost of services, aid, insurance, or medical assistance to the consumer.”

3. The Lanterman Act clearly contemplates that the services to be provided to each client be selected on an individual basis. Whether a consumer is eligible for services depends on a consideration of all relevant circumstances. See, *Williams v. Macomber (San Gabriel/Pomona Regional Center)* (1990) 226 Cal.App.3d 225.

4. Welfare and Institutions Code section 4685 provides in part:

“(a) [T]he Legislature finds and declares that children with developmental disabilities most often have greater opportunities for educational and social growth when they live with their families. The Legislature further finds and declares that the cost of providing necessary services and supports, which enable a child with developmental disabilities to live at home, is typically equal to or lower than the cost of providing out-of-home placement. The Legislature places a high priority on providing opportunities for children with developmental disabilities to live with their families, when living at home is the preferred objective in the child’s individual program plan.

(b) It is the intent of the Legislature that regional centers provide or secure family support services that do all of the following:

(1) Respect and support the decision making authority of the family.

(2) Be flexible and creative in meeting the unique and individual needs of families as they evolve over time.”

5. Welfare and Institutions Code section 4646.5 provides that the IPP planning process shall include gathering of information and conducting of assessments to determine a client’s life goals, his or her capabilities, strengths and preferences. Welfare and Institutions Code section 4646.5(a)(2) provides:

“A statement of goals, based on the needs, preferences, and life choices of the individual with developmental disabilities, and a statement of specific, time limited objectives for implementing the person’s goals and addressing his or her needs. These objectives shall be stated in terms that allow measurement of progress or monitoring of service delivery. These goals and objectives should maximize opportunities for the consumer to develop relationships, be part of community life in the areas of community participation, housing, work, school, and leisure, increase control over his or her life, acquires increasingly positive roles in community life, and develops competencies to help accomplish these goals.”

6. One of the unacknowledged issues in this case is the heavy burden that claimant’s mother has been carrying, often alone and without support. She acknowledges that claimant needs help beyond her ability to provide. Although claimant did not testify, it seems beyond question that both claimant and his mother wish that claimant reach a point where he can and does live on his own. The services and supports that Regional Center initially offered may or may not be the ultimate answer to what is needed for the transition. However, they were a start and a reasonable start. Claimant’s mother is exhausted both by caring for her son and by the battles she is fighting. Many of the battles are unnecessary. Many of them are caused primarily by her. One thing is beyond dispute. She is devoted to

her son's welfare and this is no small matter. If this devotion and the energy she has exhibited could be harnessed in a collaborative way with the Regional Center, great things might be accomplished on behalf of claimant.

ORDER

1. Claimant and the Regional Center of Orange County shall meet and convene an IPP, as soon as possible, to assess and plan for the needs of the claimant.
2. RCOC shall reimburse to claimant any out-of-pocket expense incurred as a result of his treatment with Dr. Jeffrey Bone. Such reimbursement for out-of-pocket expense shall continue at least for the next six months at which time a reassessment of the need for ongoing psychotherapy shall be made.
3. Both claimant, claimant's representative and RCOC shall act in good faith and with all deliberate speed to insure that the current stalemate regarding the provision of services is broken.

NOTICE

This is the final administrative decision. Both parties are bound by this decision. Either party may appeal this decision to a court of competent jurisdiction within ninety days.

DATED: _____

STEPHEN E. HJELT
Administrative Law Judge
Office of Administrative Hearings